STATE OF MICHIGAN

COURT OF APPEALS

VIOLA PETERSON and RONALD J. PETERSON,

Plaintiffs/Counter-Defendants-Appellees/Cross-Appellees,

V

LLOYD D. KNAPP, JR. and BETTIE JANE KNAPP,

Defendants/Cross-Appellants,

and

NONA YAEGGI and LLOYD D. KNAPP III,

Defendants/Counter-Plaintiffs-Appellants.

UNPUBLISHED
October 30, 2001

No. 225773
Marquette Circuit Court
LC No. 98-035075-AZ

Before: Griffin, P.J., and Markey and Meter, JJ.

PER CURIAM.

Defendants appeal by right from a judgment entered by the trial court after a bench trial quieting title and setting the common boundaries of three adjoining lots owned by plaintiffs and defendants.[1] We affirm.

[1] Defendants Lloyd Knapp, Jr. and Bettie Knapp filed an untimely claim of appeal. However, by order dated May 30, 2000, this Court treated their claim as a claim of cross-appeal in this docket number and permitted their appeal to proceed.

The land that is the subject of this dispute involves three parcels of real estate,[2] the eastern-most owned by plaintiffs, and the two parcels to the west belonging to defendants. The property that comprises these three parcels, as well as other adjoining property, was originally owned by Bengt Bengtson. In 1929, Bengtson sold what came to be the Peterson parcel to David Davidson. Plaintiffs purchased this property in 1972 from Davidson's successors in interest. Also in 1929, Bengtson sold what came to be the Knapp Trust parcel to Lloyd Knapp, Sr.[3] Bengtson originally transferred the Knapp III parcel to Russell Davidson, and subsequently, Davidson transferred it to William and Warren Johnson.[4] Johnson then sold the Knapp III parcel to Knapp Jr. Shortly before this action commenced, Knapp Jr. quitclaimed the property to his son Lloyd Knapp III and to Nona Yaeggi.

In 1978 and 1979, with the permission of the Johnsons, Knapp Jr.'s son Terry built a garage on property immediately to the east of the eastern boundary line of the Knapp Trust parcel. Knapp Jr. subsequently purchased the plot of land where the garage was located. Plaintiff Ronald Peterson decided that he would like to build a garage on the property between his land and the Knapp Trust parcel. He spoke to William Johnson about purchasing some land and Johnson agreed, but he suggested that Peterson survey the property because he was unsure of the boundary line. The survey Peterson commissioned determined that, rather than a 116-foot gap between the Peterson and Knapp Trust parcels as described by the deed for the Knapp III property, there was only about a 16-foot separation. This meant that the garage Knapp Jr. built and a well that had been sunk on what was presumed to be Knapp III property were in fact on Peterson's property. Because the parties were unable to resolve this boundary dispute, plaintiffs filed suit seeking to have the trial court determine the boundaries for the three parcels of property.

"Actions to quiet title are equitable in nature; this Court reviews such actions de novo." MCL 600.2932(5); *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996). The trial court's findings of fact when sitting without a jury are reviewed for clear error. *Id.*; *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Walters, supra* at 456.

---

[2] For simplicity's sake, plaintiffs' parcel will be referred to as the Peterson parcel. Following the convention generally used in the transcripts and by the parties, the parcel owned by defendants Lloyd and Bettie Knapp, Jr. will be referred to as the Knapp Trust parcel and the parcel owned by defendants Lloyd Knapp III and Nona Yaeggi will be referred to as the Knapp III parcel.

[3] Because for some undisclosed reason the conveyance to Davidson was not registered until 1931, the conveyance to Knapp was the first conveyance to take legal effect.

[4] Knapp Jr. testified that the Knapp family was related to the Davidson family by marriage: Knapp Jr.'s mother's sister (his aunt) was married to Axel Davidson. David and Russell Davidson were Axel's brothers. Furthermore, although the Knapp family was not related to William and Warren Johnson, the Johnsons were related to the Davidsons because their mother was a Davidson.

Defendants first claim that patent and latent ambiguities in the deeds require that the deeds be reformed to comport with the intention of the grantor. While acknowledging "[t]he general rule . . . that courts will follow the plain language in a deed in which there is no ambiguity," defendants argue the corollary proposition that "[i]f . . . there is an ambiguity, or if the deeds fail to express the obvious intention of the parties, the courts will try to arrive at the intention of the parties and in accordance therewith grant or deny the relief asked for." *Farabaugh v Rhode,* 305 Mich 234, 240; 9 NW2d 562 (1943).

The one "ambiguity" defendants cite is the deed's reference to the direction "east" instead of "west" in the description of the deed from Bengt Bengtson to David Davidson.[5] Defendants' own surveyor, Pierce, testified that this discrepancy was the only ambiguity in the Peterson property deed description, but that it was not material. He stated that it "jumped out at you" when the deed was examined and that it could not have misled anyone. Indeed, because the parties occupied the general parcels of property that were clearly intended to be conveyed by the grantor, no one was misled. Pierce further testified that there was no ambiguity in the original grantor's conveyance. He stated that after adjusting for the mistaken direction, both the Knapp Trust and the Peterson parcels could be placed on the ground using their respective deed descriptions. The problem arose when an attempt was made to place the Knapp III parcel on the ground – there simply was not enough land left to provide for the call of a 116-foot gap between the Knapp Trust and Peterson parcels.

Pierce testified that the most basic rule in attempting to resolve deed conflicts is the principle of senior rights. The principle of senior rights simply provides, as Pierce explained that "the first parcel to be created in an area would get its entire description and that a subsequent parcel if overlapping would not be entitled to the land described by the senior parcel. In other words, the first come, first serve." As it was expressed by the court in *Wysinski v Mazzotta,* 325 Pa Super 128, 133; 472 A2d 680 (1984), the principle of senior rights provides: "that where there is a conflict between boundaries described in deeds from the same grantor, the deed first executed has priority, and the grantee named therein has superior title." Quoting Brown, Robillard & Wilson, Boundary Control and Legal Principles (4th ed), §§ 11.1 and 11.2, the Connecticut Court of Appeals in *Goodrich v Diodato,* 48 Conn App 436, 441; 710 A2d 818 (1998) explained:

> [T]he principle of junior and senior rights is described as follows: "When a portion of a tract of land is sold, two parcels are created, a new parcel and the remainder of the parent parcel. Because the new parcel must receive all of the land described, it is called the senior deed, and the remainder, at the time of conveyance, becomes the junior deed." "As between private parties, a junior grant, in conflict with a senior grant, yields to the senior grant.". . . This principle appears to be nothing more than a restatement of the well established rule that a party cannot convey that which he no longer possesses. [Citation omitted.]

---

[5] The deed provides that the beginning point is located "one thousand and fifty-four (1054) feet *east* and two hundred and sixty-three (263) feet north of the southeast corner of said Lot four (4) Section thirty (30)."

In this case, the senior grant was to Lloyd Knapp, Sr. in 1929. The next grant was the conveyance to David Davidson in 1931. Pierce testified that by using those two deed descriptions, both parcels could be placed on the ground with no overlaps. The problem at hand arose when the conveyance to Russell Davidson was made in 1940 because, with respect to the "gap" property between the Knapp Trust and Peterson properties, all that remained to convey was approximately sixteen feet. Under the principle of senior rights, the first two conveyances were complete. The third conveyance to Russell Davidson could not receive what the grantor was no longer in a position to convey. *Goodrich, supra* at 441.

"There can be no latent ambiguity where, as here, there was land owned by the grantor which satisfied the description contained in the deed of conveyance." *Wysinski, supra* at 133. The trial court relied on the principle of senior rights in making its determination. The fact that the gap between the Knapp Trust and Peterson parcels was only about sixteen feet rather than 116 feet only affected the eastern boundary line of the Knapp III parcel. The trial court corrected any inconvenience to the Knapp Trust and Knapp III parcels by adjusting the boundary line slightly in favor of the Knapp III parcel so that there would be enough room to the side of the Knapp III cabin and so that the Knapp III well and the Knapp Trust garage would remain on their respective properties. We conclude that the trial court did not clearly err in determining that there was no ambiguity in the deed descriptions of the senior deeds requiring an inquiry into the grantor's intent.

Defendants next contend that plaintiffs may not challenge the boundary lines advocated by defendants because they have acquiesced in the existing boundary lines for over fifteen years. There are three theories of acquiescence: (1) acquiescence for the statutory period; (2) acquiescence following a dispute and agreement; and (3) acquiescence arising from an intention to deed to a marked boundary. *Walters, supra* at 457. Defendants contend that the first and third forms of the doctrine apply in this case. Defendants were required to prove their claim of acquiescence by a preponderance of the evidence. *Killips v Mannisto,* 244 Mich App 256, 260; 624 NW2d 224 (2001).

In *Wood v Denton*, 53 Mich App 435, 439-440; 219 NW2d 798 (1974), this Court observed:

> The touchstone of the application of the doctrine of acquiescence is the existence of an agreed line or boundary. Only when there has been some agreement, whether tacit or overt, as to the location of the boundary does the question of acquiescence become important. It is obvious from the evidence herein that there was never any agreement as to where the line lay. [Emphasis deleted.]

Likewise, in this case, the evidence demonstrated that there was no agreement, tacit or express, regarding the location of a boundary line. Defendant Knapp Jr. believed the original eastern boundary of the Knapp Trust property was the cedar tree line. The location of the eastern boundary for the Knapp III property was, however, entirely speculative. Neither defendant Knapp III nor Yaeggi testified concerning where they believed the boundary line between their property and plaintiffs' was located. Neither did defendants present the testimony of their

predecessors in title (assuming it was possible to do so). Plaintiffs Ronald and Viola Peterson both testified candidly that until Carlson conducted the survey, they did not know where the western boundary line of his property was located. Although the fact that Ronald Peterson sought to purchase property from the Johnsons indicated that he believed that they owned the property immediately to the west of his parcel, it is noteworthy that William Johnson suggested that Peterson should obtain a survey so that it could be determined exactly where the parcel to be purchased was situated. This indicates that the Johnsons, who owned the Knapp III parcel before Knapp Jr. purchased it and before its conveyance to defendants Knapp III and Yaeggi, did not know for certain the location of boundary lines between the parcel of land between the Knapp Trust and Peterson parcels.

Paraphrasing only slightly, this Court's conclusion in *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993) is equally applicable in this case:

> We agree with the trial court that [defendants] did not acquire title by acquiescence. The record does not reveal any substantial period of time when the adjoining property owners thought that [a specific line] was the boundary line.

Defendants also contend that there was acquiescence arising from an intention by the original grantor to deed to a marked boundary. This contention is defeated by virtue of the fact that, given the conflicting deed descriptions, it is impossible to determine to what marked boundary the grantor might have intended to convey. Defendants Knapp III and Yaeggi failed to establish that Bengtson intended to deed to a specific marked boundary, and, as noted above, he could not have conveyed land that he no longer owned. Given the final disposition by the trial court, defendants Knapp Jr. and Bettie Knapp have not lost any property, and therefore may not be heard to complain. The parties that may lose property as a result of the trial court's ruling are Knapp III and Yaeggi. However, they presented no testimony, and little evidence, to establish where the allegedly acquiesced boundary was located. Therefore, the trial court correctly ruled that defendants failed to establish a boundary line by acquiescence by an intention to deed to a marked boundary.

Defendants next contend that even if this Court should agree with the trial court regarding resolution of the first two issues, this Court must still find that defendants obtained title to the disputed property by adverse possession. Establishment of title to property by adverse possession requires a showing "by clear and cogent proof" that a claimant's possession was "actual, visible, open, notorious, exclusive, continuous and uninterrupted for the statutory period of 15 years, hostile and under cover of claim of right." *Burns v Foster*, 348 Mich 8, 14; 81 NW2d 386 (1957).

Defendants Knapp Jr. and Bettie Knapp contend that they can claim the property on which their garage was built by adverse possession. However, as plaintiffs point out in their responsive brief, plaintiffs have conceded in the trial court that these defendants are entitled to possession of the parcel upon which their garage was built, and the trial court has included that property within the redefined dimensions of the Knapp Trust parcel. Because there is no dispute concerning Knapp Jr.'s and Bettie's possession of the garage property, there is no occasion for this Court to apply the doctrine of adverse possession to the Knapp Trust property.

With respect to defendants Knapp III and Yaeggi, the doctrine of adverse possession is also inapplicable. First, it is not clear what property they contend should be awarded to them. They certainly failed to establish adverse possession of the entire 116-foot section of property between the eastern boundary of the Knapp Trust parcel and the western boundary of the Peterson parcel that was described in their deed. They never made a claim to property that would have extended well into the Peterson parcel; nor did they make any evidentiary showing that would support such a claim.[6] Moreover, the evidence tended to show that all parties had used the disputed property; defendants did not prove exclusive use. Once again, the land that could be most closely associated with them – the fire pit and the well – were included in the land assigned to them under the trial court's judgment. Therefore, defendants have failed to demonstrate by clear and cogent proof that the trial court clearly erred.

Defendants next argue that the trial court erred by establishing an easement by prescription where plaintiffs failed to prove the existence of the conditions necessary for the establishment of such an easement. "Prescriptive easements arise where a person uses, but does not possess, the land of another for a particular purpose without permission for 15 years." 1 Cameron, Michigan Real Property Law (2d ed), § 6.11, p 204. "An easement by prescription results from use of another's property that is open, notorious, adverse, and continuous for a period of fifteen years." *Plymouth Canton Community Crier, Inc v Prose,* 242 Mich App 676, 679; 619 NW2d 725 (2000). An easement by prescription requires a showing similar to that required to establish a claim of adverse possession, except that a prescriptive easement does not require a showing of exclusive use. *West Michigan Dock & Market Corp v Lakeland Investments,* 210 Mich App 505, 511; 534 NW2d 212 (1995).

Plaintiffs did not attempt to prove that they had established an easement by prescription. Rather, after the trial court granted defendants' request that it declare an easement for all parties on the circular road, plaintiffs requested that the trial court exercise its equitable powers to declare the existence of an easement (for emergency purposes only) on land comprised of both the Knapp Trust parcel and the Peterson parcel.

The trial court declared an easement for defendants' use over the circular road that led across plaintiffs' property. Defendants do not contest the trial court's decision to declare this easement. However, defendants contest the trial court's decision to declare an easement for emergency purposes along the centerline of the old road leading south across the disputed property. This easement was intended to allow all the parties a means of egress should the normal method of entering and leaving all three properties – the circular road across plaintiffs's property – become impassable. "An easement can . . . be created by operation of law, including an easement by necessity." *Chapdelaine v Sochocki,* __ Mich App __; __ NW2d __ (Docket No. 219381, issued 8/17/01), slip op p 3, citing 1 Cameron, Michigan Real Property Law (2d ed), §§ 6.5, 6.10, pp 193, 201. An easement by necessity will normally arise where a grantor splits his property and thereby creates a landlocked parcel. *Chapdelaine, supra.*

---

[6] In this regard, it should be noted that neither Knapp III nor Yaeggi testified; nor did they present the testimony of their predecessors in interest – assuming that someone from the Johnson family still survived to testify.

While claiming that the court erred by creating a prescriptive easement, defendants have failed to present any authority that would preclude the trial court from exercising its equitable power to declare an easement by necessity. Failure to adequately brief an issue results in abandonment of the claim on appeal. *FMB-First Michigan Bank v Bailey,* 232 Mich App 711, 717; 591 NW2d 676 (1998). Because the trial court's decision is supported by the evidence and by common sense, and because defendants have failed to present any authority precluding the trial court from acting as it did, the trial court properly declared an easement by necessity for emergency purposes along the line of the old "orange" road.

Defendants finally argue that the evidence or the law does not support the trial court's decision. Defendants failed to state this issue in their statement of questions presented. They have therefore failed to preserve the issue for appellate review. *Hilliard v Schmidt,* 231 Mich App 316, 318; 586 NW2d 263 (1998). Furthermore, defendants fail to cite adequate authority in support of their position; on this basis, also, their arguments are not preserved. *Prince v MacDonald,* 237 Mich App 186, 197; 602 NW2d 834 (1999).

We affirm.

/s/ Richard Allen Griffin
/s/ Jane E. Markey
/s/ Patrick M. Meter